tax property beyond the taxing power, and to measure a legitimate tax by income derived, in part at least, from the use of such property. *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, 55 L. Ed. 389, 31 Sup. Ct. 342. Where the resort to gross receipts is merely a means of ascertaining the business done by the corporation, and thus measuring the tax, it is within the power of the State. *Maine* v. *G. T. R. Co.*, 143 U. S. 217, 35 L. Ed. 994, 3 Inters. Com. Rep. 121, 12 Sup. Ct. 121, 163; *Wisconsin & M. R. R. Co.* v. *Powers*, 191 U. S. 379 48 L. Ed. 229, 24 Sup. Ct. 107. The State must be allowed to tax the property, and to tax it at its actual value as a going concern. On the other hand, the State cannot tax the interstate business. These two necessities hardly admit of an absolute logical reconciliation. Yet the distinction is not without sense. A practical rather than a logical distinction should be sought. *Galveston, H. & S. A. R. Co.* v. *Texas, supra.* In the principal case, the court appears to have adopted this practical criterion, and the rule is laid down that the tax is valid where there has been an exercise in good faith of a legitimate taxing power, even though the measure of that taxation is in part the proceeds of interstate commerce, which could not, in itself, be taxed; provided that there is no attempt to impose real burdens, under the guise of taxation, upon Interstate Commerce as such.

JUDGMENT—RES JUDICATA—WHO BOUND—In an action at law on the relation of a citizen for mandamus to the mayor and council of a city commanding them to remove certain obstructions in the street, *Held,* that a decree in the chancery court, sustaining a demurrer to a bill seeking to have the ordinance vacating the street declared void in a former action brought on the relation of other citizens, was *res judicata* in this suit. *People ex. rel. Chilcoat* v. *Harrison,* (Ill. 1912) 97 N. E. 1092.

Generally where a proceeding is brought in the name of the people on the relation of a citizen all individuals constituting the public are bound. *Xiques* v. *Bujac,* 7 La. Ann 498, *Detroit* v. *Detroit M. & R. Co.* 23 Mich. 173; *Shanahan* v. *City of South Omaha,* 2 Neb. (Unof.) 466; *Dicken* v. *Morgan,* 59 Iowa 157, 13 N. W. 57. One of the interesting features of the principal case was that the present action was brought at law, while the former decree was rendered in chancery. To hold such a decree *res judicata* is generally held good practice. FREEMAN, JUDGMENTS, Ed. 4, § 248, 252; *Sibbald's Case,* 12 Pet. 492; *Evens* v. *Tatem,* 9 Serg & R 252, 11 Am. Dec. 717; *Smith* v. *Kernochen,* 7 How. 198. A number of similar cases have arisen in relation to collection and assessment of taxes where the holdings and reasonings of the courts have been similar to the decision in the present case. *Morgan* v. *Miami County Com'rs,* 27 Kan. 89; *Otis* v. *City of St. Paul,* 94 Minn. 57, 101 N. W. 1066. It is held that a purchaser of real estate not a party to an action to enjoin the treasurer of the city from issuing a deed is not bound by the decree. *Helphrey* v. *Redick,* 21 Neb. 80, 31 N. W. 256. And where lots were sold according to a plot, it was held that the purchaser is not bound as to his rights in the street by a judgment against the city, when he was not a party to the action, *Lindsay* v. *Allen,* 112 Tenn. 637, 82 S. W. 171. But it has been held that a judgment against a city fixing the boundaries of a block is not *res judicata*

against a land owner in his suit against the owners of the block for obstructing access to his property because his rights are different from those of the general public, which alone the judgment can conclude. *Long* v. *Wilson,* 119 Iowa 267, 93 N.W. 282, 60 L.R.A. 720, 97 Am. St. Rep. 315. Also that rights of abutting property owners to the use of the streets are not affected by a suit by the city to which they are not parties. *James* v. *City of Louisville,* 19 Ky. Law Rep. 447. Though no cases exactly in point have been found it is believed that the main case proceeds upon the right theory, *Shanahan* v. *City of South Omaha, supra, Otis* v. *City of St. Paul, supra.*

MANDAMUS—WHEN LIES—GOVERNOR MEMBER OF BOARD.—Mandamus was brought against the Secretary of State, State Auditor and two other State officers, who, with the Governor, comprised the commissioners of the land office, to compel them to pay certain sums of money in the State Treasury *Held,* that mandamus will not issue to compel the performance of an act by the Governor, but may be issued to require a board, of which the Governor is *ex-officio* a member, to perform ministerial duties imposed by law. *State ex rel. Dunlop, State Treasurer,* v. *Cruce, et al., Com'rs of Land Office* (Okla. 1912) 122 Pac. 237.

In denying mandamus against the governor alone, the court is in line with the holdings in Arkansas, Florida, Georgia, Illinois, Indiana, Louisiana, Maine, Michigan, Mississippi, Missouri, New Jersey, New York, Tennessee, and Massachusetts, though a contrary doctrine is held in Alabama, California, Colorado, Kansas, Kentucky, Maryland, Minnesota, Montana, Nebraska, Nevada, North Carolina, Ohio and Wyoming. In these states mandamus against the governor is allowed to compel the performance of ministerial duties. For extended note upon mandamus against the governor see 10 MICH. L. REV. 480 and note to *State* v. *Brooks,* 14 Wyo. 393, 6 L. R. A. (N. S.) 750. In holding the writ will run against the other members of the board, though not against the governor, the principal case is sustained by the weight of authority. *Louisiana Bd. of Liquidation* v. *McComb,* 92 U. S. 531, 23 L. Ed. 623; *State* v. *Chase,* 5 Ohio St. 528; *Gray* v. *State,* 72 Ind. 567; *State, ex rel. Law* v. *Towns,* 8 Ga. 360, 370: *People, ex. rel. Broderick* v. *Morton,* 156 N. Y. 136. It is considered in these cases that a board, being able to act by a majority, mandamus may issue against the other members to compel them to act, while it would be denied if brought against the governor alone. But the principal case is opposed to the decisions in *State* v. *Bd. of Liquidation,* 42 La. Ann. 648; *State* v. *Bd. of Inspectors,* 114 Tenn. 516; *Mc Fall* v. *State Bd. of Educators,* 101 Tex. 572; *In re Dennett,* 32 Me. 508; *State* v. *Harvey,* 11 Wis. 33; *People ex rel. Sutherland* v. *Governor,* 29 Mich. 320, 18 Am. Rep. 89; where mandamus against a board of which the governor is a member is denied.

MASTER AND SERVANT—FELLOW-SERVANT RULE.—An employee at work in the repair yard of a railroad was killed through the negligence of an engine and switching crew while the latter were running a car needing repair from the general tracks into the repair yard. *Held,* that the fellow-servant rule was applicable. *Beutler* v. *Grand Trunk Junction R. Co.* (1912) 32 Sup. Ct. 402.